

THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

STUART REGES,

Plaintiff,

v.

ANA MARI CAUCE, et al.,

Defendants.

Civil Action No.: 2:22-cv-00964-JHC

**NOTICE OF SUPPLEMENTAL
AUTHORITY**

Under Local Civil Rule 7(n), Plaintiff Stuart Reges provides Notice of Supplemental Authority related to Defendants' motion to dismiss (Dkt. ## 50, 52, 54) and the parties' cross-motions for summary judgment (Dkt. ## 60, 64, 75, 77, 79, 80). On April 18, 2024, after the parties completed briefing on these pending motions, the U.S. Court of Appeals for the Ninth Circuit decided *Meinecke v. City of Seattle*, No. 23-35481. The decision is attached to this Notice as Exhibit A.

Meinecke supports Plaintiff's argument that Defendants' restrictions on his speech are content based because they depend upon the reactions of listeners. Pl.'s Opp'n to Defs.' Mot. Dismiss, Dkt. # 52, 21–22; Pl.'s Mot. Summ. J., Dkt. # 60, 26. In *Meinecke*, the Ninth Circuit ruled Seattle's police department could not relocate or arrest the plaintiff "only in response to the actual and potential reaction of the audience" to protected speech. No. 23-35481, 18. Doing so "based exclusively on the reaction of Meinecke's audience" enforced an unconstitutional "heckler's veto." *Id.* at 16. "Our precedent on this point is clear: The prototypical heckler's veto case is one

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in which the government silences *particular* speech or a *particular* speaker due to an anticipated disorderly or violent reaction of the audience.” *Id.* at 13–14 (cleaned up).

The impermissibility of a “heckler’s veto” is central to Plaintiff’s claims and the parties’ briefing on *Pickering* balancing, causation, and viewpoint discrimination. First, to address *Pickering*’s balancing test, the parties briefed the constitutionality and weight of Defendants’ alleged interest in punishing Reges’s speech in response to actual and potential audience reactions. *See, e.g.*, Pl.’s Opp’n to Defs.’ Mot. Dismiss, Dkt. # 52, 21–22; Pl.’s Mot. Summ. J., Dkt. # 60, 26. Second, Reges argues that Defendants’ adverse actions were caused by “nothing more than listeners’ reactions to Reges’s speech,” and therefore unconstitutionally content based. Pl.’s Reply Mot. Summ. J., Dkt. # 80, 10. Third, the parties’ viewpoint discrimination arguments turn, in part, on whether the Defendants “could . . . justify their censorship based on other UW community members’ negative reactions to [Reges’s] speech.” Pl.’s Mot. Summ. J., Dkt. # 60, 18.

Dated: April 21, 2024

Respectfully submitted,

s/Gabriel Walters

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CERTIFICATE OF SERVICE

Plaintiff's counsel confirms that a true and correct copy of the foregoing was served via the Court's electronic filing system on this day, April 21, 2024. Notice of this filing will be sent by operation of the Court's electronic filing system.

DATED: April 21, 2024

Respectfully submitted,

s/Gabriel Walters

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